

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF JACKSON PURCHASE)	
ENERGY CORPORATION FOR)	CASE NO. 2004-00319
ADJUSTMENT IN EXISTING CABLE)	
TELEVISION ATTACHMENT RATES)	

O R D E R

Ballard Rural Telephone Cooperative Corporation ("Ballard RTCC") has moved for immediate application of Jackson Purchase Energy Corporation's ("JPEC") Cable Television Attachment Tariff ("CTAT") Rate to its attachments on JPEC utility poles and for consolidation of this proceeding with Case No. 2004-00036.¹ JPEC has moved for dismissal of Ballard RTCC as an intervening party to this proceeding and for approval of its settlement agreement with Kentucky Cable Television Association ("KCTA"). For the reasons set forth below, we deny these motions.

Ballard RTCC and JPEC in 1954 entered into a "General Agreement for Joint Use of Wood Poles," which established the rates and conditions under which each utility would make its utility poles available to the other. While each utility continues to apply the terms of this Agreement to attachments that the other utility makes to its utility poles, JPEC has notified Ballard RTCC that it wishes to terminate the contract and has

¹ Case No. 2004-00036, Ballard Rural Telephone Cooperative Corporation, Inc. v. Jackson Purchase Energy Corporation (Ky. PSC filed Feb. 2, 2004). In its motion, Ballard "suggests" that the Commission, sua sponte, consolidate this proceeding with Case No. 2004-00319. For purposes of this Order, we shall consider this "suggestion" as a motion to consolidate the two proceedings.

proposed new rates for Ballard RTCC's pole attachments. Ballard RTCC disputes the reasonableness of the JPEC's proposed rate. In Case No. 2004-00036, it brought a complaint against JPEC in which it requested that the Commission assert jurisdiction over the rates and conditions of service that JPEC applies for joint use pole attachments and that the Commission direct JPEC to assess Ballard RTCC the same rate for joint use pole attachments that is assessed for cable television attachments. While that proceeding remains on the Commission's docket, we have asserted jurisdiction over joint use pole attachments and advised the parties that, in the event they could not agree upon a rate for such attachments, we would establish an appropriate rate.²

Following the filing of Ballard RTCC's complaint, JPEC on November 15, 2004, applied for adjustment to its CTAT Rate. On February 17, 2005, the Commission suspended the procedural schedule in this proceeding at the parties' request to permit settlement negotiations. On April 13, 2005, Ballard RTCC moved for immediate application of JPEC's CTAT Rate to its attachments to JPEC utility poles and for consolidation of this proceeding with Case No. 2004-00036. The following day JPEC moved for dismissal of Ballard RTCC as an intervening party to this proceeding and for approval of its settlement agreement with KCTA.

We first address JPEC's motions. In support of its motion to dismiss Ballard RTCC as an intervenor, JPEC argues that Case No. 2004-00036 is the more appropriate forum to address the pole attachment rate to be assessed to Ballard RTCC. It further argues that, as Ballard RTCC is not a cable television provider, it is not eligible for the CTAT Rate and that its continued presence in this proceeding will only cause

² Case No. 2004-00036, Order of March 23, 2005.

JPEC and KCTA to incur unnecessary expenses litigating unnecessary issues. Finally JPEC argues that Ballard RTCC's dismissal from this proceeding will not adversely affect the telephone utility's rights as it may continue to litigate the issue of the rates for joint use attachments in Case No. 2004-00036.

We find little merit to these arguments. The Commission previously found that Ballard RTCC's participation in this proceeding was likely to present issues or develop facts that would assist us in fully considering JPEC's application without unduly complicating or disrupting this proceeding.³ JPEC has failed to provide any argument or evidence to disturb that finding or require reconsideration of our earlier Order. That JPEC and Ballard RTCC are unable to reach an agreement upon the level of the CTAT Rate is not a sufficient basis to dismiss Ballard RTCC as an intervenor.⁴ As we have yet to hold a hearing on either JPEC's proposed CTAT Rate or the rate contained in the Settlement Agreement, the Commission is not in a position to find that Ballard RTCC's objections are unreasonable or unduly disrupting this proceeding. Accordingly, JPEC's motion regarding Ballard RTCC's status as an intervenor should be denied.

Having determined that JPEC's motion to dismiss Ballard RTCC as an intervenor should be denied, we must also deny JPEC's motion to approve the Settlement Agreement. As Ballard RTCC remains a party to the proceeding and has filed objections to the proposed Settlement Agreement, the Commission is precluded from accepting the Settlement Agreement until it has conducted a full-scale hearing on the

³ Case No. 2004-00319, Order of December 23, 2004.

⁴ Were disagreements between the applicant and intervenors to be a sufficient basis for denying intervention, few entities would likely be permitted to intervene in Commission proceedings.

merits of the rate adjustment proposal. See Kentucky-American Water Co. v. Commonwealth of Kentucky ex rel. Cowan, 847 S.W.2d 737, 741 (Ky. 1993).

We next address Ballard RTCC's motion for an Order requiring JPEC to apply its CTAT Rate to Ballard RTCC attachments. In support of its motion, Ballard RTCC argues that no significant difference exists between the pole attachments of cable television entities and those of telephone utilities. While the technology that telephone utilities and cable television operators use to provide telephony and video services may differ, Ballard RTCC argues, the end-users of such services make no distinction between the two entities. It contends that they are thus competitors and should be afforded equal protection. Ballard RTCC asserts that JPEC is unfairly discriminating against Ballard RTCC by refusing to apply its CTAT Rate to Ballard RTCC attachments,

The Commission observes that Ballard RTCC made a similar motion in Case No. 2004-00036 and that we denied the motion as premature.⁵ In that instance, we stated that "the joint users should be permitted the opportunity to continue negotiating the rates and terms of service to which each will make their poles available to the other."⁶ We further stated that, in the event the parties are unable to reach agreement upon the appropriate level of rates, this Commission would "resolve the dispute and establish rates and terms for their pole attachments that are fair, just, and reasonable."⁷

As we established this case solely to review JPEC's proposed adjustment of its CTAT Rate and as the issue of the appropriate rate that JPEC should assess Ballard

⁵ Case No. 2004-00036, Order of March 23, 2005 at 7.

⁶ Id.

⁷ Id.

RTCC for attachments to JPEC's utility poles is the subject of another Commission proceeding, we find that Ballard RTCC's motion should be resolved in that proceeding.

As to Ballard RTCC's motion to consolidate, we find at this time no reason to consolidate the two proceedings. Should the Commission determine that the CTAT Rate is the appropriate rate for Ballard RTCC's pole attachments in Case No. 2004-00036, Ballard RTCC's intervention in this proceeding will have allowed it adequate opportunity to present evidence and argument on the CTAT Rate.

IT IS THEREFORE ORDERED that:

1. Ballard RTCC's motion to apply CTAT Rates is denied.
2. Ballard RTCC's motion to consolidate this proceeding with Case No. 2004-00036 is denied.
3. JPEC's motion to dismiss Ballard RTCC as an intervenor is denied.
4. JPEC's motion to approve the Settlement Agreement is denied.
5. The parties shall follow the procedural schedule appended to this Order.

Done at Frankfort, Kentucky, this 12th day of July, 2005.

By the Commission

ATTEST:


Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2004-00319 DATED July 12, 2005

JPEC's responses to the initial information request
Submitted on January 14, 2005 shall be filed with the
Commission no later than..... 07/20/2005

An informal conference shall be held at 1:00 p.m., Eastern
Daylight Time, in Conference Room 1 of the Commission's
offices at 211 Sower Boulevard, Frankfort, Kentucky..... 07/26/2005

A public hearing for the purpose of cross-examining witnesses
who have previously filed written testimony in this proceeding
shall be held (To Be Scheduled)